

Assembly Bill No. 275

Passed the Assembly June 2, 2009

Chief Clerk of the Assembly

Passed the Senate September 3, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 14250 and 14251 of the Penal Code, relating to missing persons, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 275, Solorio. Missing persons: DNA database.

Existing law requires the Department of Justice to develop a DNA database for all cases involving the report of an unidentified deceased person or a high-risk missing person, as defined, and provides for the collection of DNA samples from unidentified deceased persons and from potential sources for comparison, as specified. Existing law requires that, until January 1, 2010, the database be funded by a \$2 increase on death certificates issued by a local governmental agency or by the State of California. Existing law specifies the procedure for identifying the backlog of unidentified remains.

This bill would delete the expiration date for the provision authorizing the collection of the \$2 increase on death certificates. This bill would also make clarifying changes to the procedure for identifying any backlog of unidentified remains or donated familial samples. By requiring the collection of the increase on death certificates issued by local officials, the bill would also impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 14250 of the Penal Code is amended to read:

14250. (a) (1) The Department of Justice shall develop a DNA database for all cases involving the report of an unidentified deceased person or a high-risk missing person.

(2) The database required in paragraph (1) shall be comprised of DNA data from genetic markers that are appropriate for human identification, but have no capability to predict biological function other than gender. These markers shall be selected by the department and may change as the technology for DNA typing progresses. The results of DNA typing shall be compatible with and uploaded into the CODIS DNA database established by the Federal Bureau of Investigation. The sole purpose of this database shall be to identify missing persons and shall be kept separate from the database established under Chapter 6 (commencing with Section 295) of Title 9 of Part 1.

(3) The Department of Justice shall compare DNA samples taken from the remains of unidentified deceased persons with DNA samples taken from personal articles belonging to the missing person, or from the parents or appropriate relatives of high-risk missing persons.

(4) For the purpose of this database, “high-risk missing person” means a person missing as a result of a stranger abduction, a person missing under suspicious circumstances, a person missing under unknown circumstances, or where there is reason to assume that the person is in danger, or deceased, and that person has been missing more than 30 days, or less than 30 days in the discretion of the investigating agency.

(b) The department shall develop standards and guidelines for the preservation and storage of DNA samples. Any agency that is required to collect samples from unidentified remains for DNA testing shall follow these standards and guidelines. These guidelines shall address all scientific methods used for the identification of remains, including DNA, anthropology, odontology, and fingerprints.

(c) (1) A coroner shall collect samples for DNA testing from the remains of all unidentified persons and shall send those samples to the Department of Justice for DNA testing and inclusion in the

DNA databank. After the department has taken a sample from the remains for DNA analysis and completed all DNA testing, the remaining evidence shall be returned to the appropriate local coroner.

(2) After a report has been made of a person missing under high-risk circumstances, the responsible investigating law enforcement agency shall inform the parents or other appropriate relatives that they may give a voluntary sample for DNA testing or may collect a DNA sample from a personal article belonging to the missing person if available. The samples shall be taken by the appropriate law enforcement agency in a manner prescribed by the Department of Justice. The responsible investigating law enforcement agency shall wait no longer than 30 days after a report has been made to inform the parents or other relatives of their right to give a sample.

(3) The Department of Justice shall develop a standard release form that authorizes a mother, father, or other relative to voluntarily provide the sample. The release shall explain that DNA is to be used only for the purpose of identifying the missing person and that the DNA sample and profile will be destroyed upon request. No incentive or coercion shall be used to compel a parent or relative to provide a sample.

(4) The Department of Justice shall develop a model kit that law enforcement shall use when taking samples from parents and relatives.

(5) Before submitting the sample to the department for analysis, law enforcement shall reverify the status of the missing person. After 30 days has elapsed from the date the report was filed, law enforcement shall send the sample to the department for DNA testing and inclusion in the DNA database, with a copy of the crime report, and any supplemental information.

(6) All retained samples and DNA extracted from a living person, and profiles developed therefrom, shall be used solely for the purpose of identification of the deceased's remains. All samples and DNA extracted from a living person, and profiles developed therefrom, shall be destroyed after a positive identification with the deceased's remains is made and a report is issued, unless any of the following has occurred:

(A) The coroner has made a report to a law enforcement agency pursuant to Section 27491.1 of the Government Code, that he or

she has a reasonable ground to suspect that the identified person's death has been occasioned by another by criminal means.

(B) A law enforcement agency makes a determination that the identified person's death has been occasioned by another by criminal means.

(C) The evidence is needed in an active criminal investigation to determine whether the identified person's death has been occasioned by another by criminal means.

(D) A governmental entity is required to retain the material pursuant to Section 1417.9.

(7) Notwithstanding any other provisions of this section, upon the request of any living person who submits his or her DNA sample and profile pursuant to this section, including the parent or guardian of a child who submits a DNA sample of the child, the DNA sample shall be removed from the DNA database.

(d) All DNA samples and profiles developed therefrom shall be confidential and shall only be disclosed to personnel of the Department of Justice, law enforcement officers, coroners, medical examiners, district attorneys, and persons who need access to a DNA sample for purposes of the prosecution or defense of a criminal case, except that a law enforcement officer or agency may publicly disclose the fact of a DNA profile match after taking reasonable measures to first notify the family of an unidentified deceased person or the family of a high-risk missing person that there has been an identification.

(e) All DNA, forensic identification profiles, and other identification information retained by the Department of Justice pursuant to this section are exempt from any law requiring disclosure of information to the public.

(f) (1) Any person who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, or for any purpose other than for identification or for use in a criminal investigation, prosecution, or defense, is guilty of a misdemeanor.

(2) A person who collects, processes, or stores DNA or DNA samples from a living person that are used for DNA testing pursuant to this section who does either of the following is liable in civil damages to the donor of the DNA in the amount of five thousand dollars (\$5,000) for each violation, plus attorney's fees and costs:

(A) Fails to destroy samples or DNA extracted from a living person pursuant to paragraph (6) of subdivision (c).

(B) Discloses DNA samples in violation of subdivision (d).

(g) (1) If a disclosure or failure to destroy samples described in paragraph (2) of subdivision (f) is made by an employee of the Department of Justice, the department shall be liable for those actions of its employee.

(2) Notwithstanding any other law, the remedy in this section shall be the sole and exclusive remedy against the department and its employees available to the donor of the DNA against the department and its employees.

(3) The department employee disclosing DNA or other forensic identification information or otherwise violating this section shall be absolutely immune from civil liability under this or any other law.

(h) It is not an unauthorized disclosure or violation of this section to release DNA and other forensic identification information as part of a judicial or administrative proceeding, to a jury or grand jury, or in a document filed with a court or administrative agency, or for this information to become part of the public transcript or record of proceedings.

(i) In order to maintain computer system security, the computer software and database structures used by the DNA laboratory of the Department of Justice to implement this chapter are confidential.

SEC. 2. Section 14251 of the Penal Code is amended to read:

14251. (a) The “Missing Persons DNA Database” shall be funded by a two dollar (\$2) fee increase on death certificates issued by a local governmental agency or by the State of California. The issuing agencies may retain up to 5 percent of the funds from the fee increase for administrative costs.

(b) Funds shall be directed on a quarterly basis to the “Missing Persons DNA Data Base Fund,” hereby established, to be administered by the department for establishing and maintaining laboratory infrastructure, DNA sample storage, DNA analysis, and labor costs for cases of missing persons and unidentified remains. Funds may also be distributed by the department to various counties for the purposes of pathology and exhumation consistent with this title. The department may also use those funds to publicize the database for the purpose of contacting parents and relatives so that

they may provide a DNA sample for training law enforcement officials about the database and DNA sampling and for outreach.

(c) The identification of any backlog of human remain samples or samples donated by a family member or from a personal article belonging to the missing person may be outsourced to other laboratories at the department's discretion.

(d) (1) The Department of Justice shall retain the authority to prioritize case analysis, giving priority to those cases involving children and those involving homicide victims.

(2) If federal funding is made available, it shall be used to assist in the identification of the backlog of high-risk missing person cases and long-term unidentified remains.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to track down persons who threaten the public peace and the safety of our citizens, it is necessary for this act to take effect immediately.

Approved _____, 2009

Governor